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## CABINET GOVERNMENT IN THE UNITED STATES.

In the number of this Review for November, 1891, an article appeared by Mr. Gamaliel Bradford, entitled, "Congress and the Cabinet," in which Mr. Bradford discusses the bill reported in 1881 by Senator Pendleton, to give the members of the Cabinet seats upon the floor of the Senate and House of Representatives, with the right to participate in debate, and to give information asked by resolution or in reply to questions propounded to them under the rules of the Senate and House. In the report of the special committee having this subject in charge there is nothing to indicate that the members of the Cabinet were expected to do anything more than appears upon the face of the bill. Yet Mr. Bradford, in discussing it, has assumed nothing less than a revolution in our methods of legislation. Instead of the mere "privilege to give their suggestions and advice in debate, by word of mouth," as proposed by the Pendleton Committee, the members of the Cabinet are, in Mr. Bradford's interpretation of the bill, to take the initiative in preparing and in introducing bills for the action of

Congress. In other words, the initiative and conduct of the business of legislation is to be transferred from the members of Congress to the officers of the Executive department. This would be a new method of legislation, which might properly be entitled, "irresponsible Cabinet government." "The Cabinet," says Mr. Bradford, "would be ready to present, at the opening of the session, a series of measures perfectly prepared from the point of view of the general interest, and would at once demand and receive for these the attention of the Houses in separate succession." Of course it follows that the system of referring bills to legislative committees would be abolished, and the whole business of Congress would be done in open sessions, under the guidance of the Cabinet ministers. Now, whether this change be desirable in itself or not, it certainly is not the question raised by the proposed bill; and it is difficult to see how this bill could, by any possibility, have that effect. That the committee, of which Mr. Pendleton was chairman, had no such object as this in view is made clear by the report which accompanied the bill. "The head of a department," the committee declared, "reporting in person and orally, or participating in debate, becomes no more a member of either House than does the chaplain, or the contestant or his counsel." Again, "Your committee is not unmindful of the maxim, that in a Constitutional government the great powers are divided into legislative, executive, and judicial, and that they should be conferred upon distinct departments. These departments should be defined and maintained; and it is a sufficiently accurate expression to say that they should be independent of each other," but not necessarily entirely separate. The committee states further, that in its opinion the bill would not aggrandize or impair the executive power, as defined in the Constitution. "It will not change the relations of the Cabinet to the President and Congress." The heads of departments "cannot assume undue leadership in Congress, because success will not prolong, as defeat will not terminate, their tenure of office." "The concur-

rence of opinion between the President and Congress is not essential, perhaps is not possible."

There would seem to be nothing, therefore, in the proposed bill, or in the accompanying report, that would indicate any intended change in the system of legislation by committees, or any transfer of the initiative therein to the executive. Indeed, would not such active participation in legislation by the heads of departments be directly contrary to the spirit of that clause of the Constitution which declares that "no person holding any office under the United States shall be a member of either House during his continuance in office"? The position of the founders of our institutions, on this point, is still more definitely expressed in the Massachusetts Bill of Rights: "In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws, and not of men." In view of the notorious attempt of George III., toward the end of the last century, to tyrannize over the English Parliament and nation, the thing that the framers of our Constitution most feared in government was the excessive power of the executive; and to prevent this, they emphasized strongly the separation of the executive and legislative departments. There was nothing in the Constitution, however, to prevent the President and the Cabinet officers from making oral communications to the Houses of Congress; and that, in fact, was a common practice during the first administration of Washington. Moreover, in the Act of Congress of September 2d, 1789, establishing the Treasury Department, the Secretary of the Treasury was "to make report, and give information to either branch of the legislature, *in person or in writing* (as may be required), respecting all matters referred to him by the Senate or House of Representatives, or which shall per-

tain to his office." In the debate on this measure, in the House, it was objected that it would "establish a precedent which might be extended until we admitted all the ministers of the government on the floor . . . . thus laying the foundation for an aristocracy or a detestable monarchy." Although the above-mentioned provision was retained in the bill, it was soon afterwards determined by Congress that the Secretary of the Treasury should communicate to Congress in writing, and not in person, and that has since been the practice. The strict right to take part in debate might, perhaps, be brought into the category of communications to Congress, and not violate the letter of the Constitution, though it would evidently not be in accordance with the intention of the framers of that instrument. Be that as it may, the intention of the Pendleton Bill did not go beyond this strict right of communication and debate. "We are dealing with no new question," says the report; and it then refers to the above-mentioned practice in Washington's administration. Now the Pendleton Bill, in this limited sense, if enacted into a law, would, perhaps, do no serious harm, unless, indeed, it should tend to create friction between the two departments, or be followed up on the part of the executive by intrigue and the use of patronage in support of its views. But, on the other hand, would it be of great advantage in legislation? How could it, for instance, eradicate the evils of legislation, which Mr. Bradford so much deplores? It is difficult to see how it could change in the least the method of legislation by committees, which is, perhaps, the feature most open to criticism. With no right in debate except to favor or oppose bills already introduced, and already acted upon by committees, it is hardly probable that the heads of departments could ever become leaders of parties in Congress. They could undoubtedly make known the opinions and desires of the executive department in regard to proposed bills; and, in the case of a certain class of bills touching the business of this department, it might be highly useful. But in regard to the great

majority of bills, not of this nature, it is a mistake to assume that the opinion of the Cabinet ministers would have greater weight, or, indeed, be more valuable than that of Congressmen. As to that part of the proposed measure which requires the members of the Cabinet to answer questions in the Houses of Congress, there is perhaps no serious objection. If it should cause the executive business, especially in the field of foreign relations, to be done more in the light of day, it might be a distinct advantage. But the scheme, as a whole, hardly appears so unquestionably advantageous, that one can reasonably impute unworthy motives to Congressmen for neglect to make it a law. And may it not be doubted whether Mr. Bradford, even, would be satisfied with the Pendleton Bill as thus strictly defined?

What Mr. Bradford would seem to desire for the United States is responsible Cabinet government; but as that cannot be had without a radical change of the Constitution, he proposes that Congress shall voluntarily transfer the conduct of legislation to the wholly irresponsible officers of the executive department. Now, granting that Congress would consent thus to efface itself—a possibility so remote as to be hardly worth considering—is it certain that we should have better laws, or a better system of legislation? "The President," says Mr. Bradford, "represents the country as a whole, and is therefore in a position to consider the 'general interests of the people.'" But how can the President represent the country as a whole on any question which interests every part? Take, for instance, the question of the free coinage of silver; the South is for it, the East against it, and the West divided. No one man can represent all these views. The only way to settle the question is by the vote of a majority of the representatives of all sections of the country. Is there not fallacy in the statement that "the people of the United States, as a whole, are not represented at all in either House of Congress?" It is true that each member represents a locality; but as a body, Congress represents every State and district in the land. And not only

the majority of the people are represented, but, taking the country as a whole, the minority as well. Whereas, the President represents merely the majority, and often, indeed, not that. On what theory can President Harrison, for instance, be said to represent the States or people of the South, or any other part of the nation which cast their votes against him and against the principles which he advocates? It may be said that, in the case of bills of a purely local or sectional interest, the Cabinet officers might counteract the "log-rolling" propensities of individual Congressmen. But if the President chooses to use it, he has now in the veto power a pretty effectual check on that species of legislation. There was an excellent opportunity of this kind in the recent Chinese-exclusion Act. The difficulty here is that the President is dominated by the same party exigencies that prevail over Congressmen.

Again, Mr. Bradford would seem to believe that by giving the initiative in legislation to the executive officers, such laws as the McKinley Act, of which he disapproves, would not be enacted. On the contrary, would it not facilitate the passage of such bills if they were supported by the executive and its influence? We can hardly assume that the President will be opposed to the principles of his party. The McKinley Act was passed because a majority of the representatives of the people, in Congress, were in favor of it; and no one will say that it was not openly and fairly discussed. It is true that unwise laws are passed; but much of the fault lies with the people rather than with their representatives. And as Mommsen says of the Roman Republic, "while they did not stop the evil at its source, it was to little purpose that the better disposed listened with anxiety to the dull murmur of the swelling flood, and worked at dykes and dams." Legislation will not be greatly improved by putting it into the hands of leaders, while the vicious practices of the caucus and the "spoils system" go on unchecked; eradicate these evils and reform in methods of legislation will follow. The overgrown power of the Speaker and the exag-

gerated committee system in our legislation are not integral parts of the Constitution ; they are subject to the temporary rules of the House, and may be modified or abolished at pleasure. This would seem to be a more fitting point of attack for our critics and for " popular agitation " than to attempt to remedy the evil by the doubtful expedient of transferring the conduct of legislation to the executive branch of the government, even were it possible to do so.

Probably no one will deny that our system of legislation has its faults, but is there any system that is perfect ? The question should be, which system is the safest in the long run ? The important thing in legislation is not to have a machine which will turn out laws with the least friction—where there is no friction, there is very likely to be despotism—but which shall be government by the people, and still protect their fundamental rights against anarchy on the one hand and tyranny on the other. It may be doubted whether the rule of the people will for a long time to come be a very orderly kind of government. Mistakes may be costly, but they will be corrected ; the serious danger to guard against is dishonesty and corruption, and for this mere dykes and dams will not be adequate.

As to the larger question of Responsible Cabinet Government, as compared with ours, I have discussed it elsewhere,\* and will therefore limit myself in this paper to a brief statement of some points of difference, and to the opinions of some recent writers upon the subject.

The critics of our system of government have as a rule dwelt upon its defects only, leaving its advantages entirely out of view ; and on the other hand, in comparing it with the English system, they have as carefully extolled the excellencies of that system, ignoring its weaknesses. Now, let us for once reverse this process, and point out, first, some of the defects of Cabinet government. The feature of their government, which is causing most anxiety in the minds of many educated Englishmen, is perhaps the unchecked power

\* Papers of the American Historical Association, vol. iv., part 3, p. 109.

of the House of Commons ; which has gradually "arrogated to itself the character of a constituent national convention to impose any changes in the national institutions it sees fit." There was no danger so long as the House of Commons represented only the educated and wealthy classes, who, whether Whig or Tory, were always conservative, differing in that respect only in degree. But will it be the same now that the masses, comprising the ignorant, the radical, and the discontented elements of society, are represented in the House of Commons, and have a voice in appointing the cabinet and in shaping the legislation of the kingdom ? Mr. Bagehot was frank enough to say that he was "exceedingly afraid of the ignorant multitude of the new constituency ;" he felt that if they once discovered their power and determined to use it, there was no check which could stay their hand. Mr. Caleb Cushing once put in terse language this inherent weakness of the English form of government. He said : " Now, the submergence of the power of the Crown in Parliament, and that of Parliament in the House of Commons, and the commitment of all these powers to transitory nominees of the House of Commons, are facts which, combined, have produced the result that government in England is at the mercy of every gust of popular passion, every storm of misdirected public opinion, every devious impulse of demagogic agitation—nothing corresponding to which exists in the United States."

Another and the most prominent defect of cabinet government is the instability of the ministers. Cabinet government is the government of a party ; and for its successful operation it must have at all times a majority at its back in Parliament. If it were possible to direct the current of public opinion into exactly two channels there would be but two parties, one of which would generally be in the ascendancy ; but in practice this is found to be a very difficult thing to accomplish, and it becomes the more difficult as the right of suffrage is extended to the mass of the people, with their ever varying interests. In the countries of Continental

Europe, parties, if indeed they may be said to exist, are broken up into groups, no two or more of which ever act together for any considerable length of time ; and ministries are, without a moment's notice, confronted at brief intervals with opposing majorities, and must give place to others, whose tenure of office is, however, equally unstable and ephemeral. "A cabinet," said the late Professor de Laveleye, "is never sure of its majority. . . . To-day it obtains a vote of confidence comprising two-thirds of the voters ; a few days later, it falls, on account of some incident of insignificant importance. In order to keep its partisans united it must engage without ceasing in compromises, concessions and combinations. . . . A chief of a group, local or provincial, desires a road, a bridge or a railway ; he must be accorded everything he demands, or he will carry his forces over to the opposition and defeat the government. The amount of thought, of adroitness, of eloquence, and of suppleness which a minister is obliged to make use of in order to keep his place, even for a year, is prodigious. The most difficult work of a diplomat is child's play by the side of it." Is it a cause for wonder, then, that ministries are unstable and that legislation and administration are paralyzed ? It may be said that they do these things better in England ; but even in England there are not lacking evidences of the same evil. Speaking of parliamentary government in England, Professor Gneist says : "After all correctives for the moderation of the social conflicts of interest have ceased, *this* kind of party rule falls into a helpless dependence on unforeseen combinations of social interest, on prejudices relatively stronger, on political agitation and the tactical skill of party-movement, to which already, under the second Reform Bill, Disraeli, as well as Gladstone, owe their respective positions. The twofold division into a Conservative and Liberal parliamentary party, which previous to the present parliamentary government was necessary, in reality no longer exists. For a length of time, side by side with the two parties, there have existed (as in Germany) radical, denomi-

national, national sections, having their special interests, with 'independent' members and others, whose number is slowly, but steadily, on the increase. The bearing of the English Parliament had already become so changed under influence of these factors that it was found expedient to impose stern restrictions on the liberty of speech, once even (in 1881) by the exclusion of thirty-two fractious members. Already, since the Reform Bill of 1867, the dismemberment of parliamentary parties has, in substitution of a party-government on traditional lines, led to the quasi-dictatorial position of a single statesman, a personal interpreter of the actual average of public opinion! Till the advent of Radical Governments, therefore, there is nothing for it but Coalition Ministers."

For how long a time did the Home-rule party block the business of Parliament, and render the tenure of ministerial office almost as precarious as in France or Italy? It is true, the dead-lock was broken, but it was broken only by resorting to the device of Mahomet, that of going to the mountain if the mountain would not come to him. Parnell would not go to Gladstone, so Gladstone went to Parnell. He had already gone to the Radicals, and, if his speeches are an index, he is now far on the road to the Socialist camp. There is no other alternative; one of the two great parties must yield to any faction which becomes strong enough to hold the balance of power between them, or suffer the inevitable consequences—instability and impotence of government. "No such instability," says Judge Hare, "can well occur in the United States, where if a third party rendered ordinary legislation impracticable, with the view of obtaining some real or fancied benefit for a peculiar State or section, it would still be possible to vote the supplies; and the government would proceed in its accustomed course under the guidance of the President, notwithstanding the discord which prevailed in Congress."\*\*

The absolute necessity, moreover, of maintaining a party majority in support of the ministry, if Cabinet government

\* Constitutional Law, I. 179.

is to be successful, as in England and Belgium, has engendered in those countries a most excessive and vicious influence of party. The rank and file of a party are drilled down to a dead level of opinion; no "difference of creed" is permitted, and any independence of thought or action in political matters is sternly rebuked. The leader is to formulate a policy, and the mass of the party must accept it without question. "Government can go on," said Professor de Laveleye, "only by rigid discipline in the party, otherwise it ends in confusion, impotence and discredit."

There is a certain attractiveness in the principle of perfect organization under the guidance of a single mind; we cannot but admire the orderly precision of a well disciplined army, or the effective methods of a thoroughly drilled fire-brigade. They represent simplicity and strength, and are in these respects wholly commendable. Organization for a single purpose is an excellent thing, if the purpose be worthy; but organization without a special object—for merely general purposes—is pretty sure to degenerate into organization for the sake of the organization; it will then be supported from selfish motives, and will fall under the power of self-seeking leaders. Burke defined party as "a body of men united for promoting by their joint endeavors the national interests upon some particular principle upon which they are agreed." Except in this sense, parties are an evil; and the more strictly they are disciplined and the more obedient they are to leaders, the greater is the evil. Unscrupulous and dishonest men will always have the advantage over honest men as political drill-masters; what else indeed does the "machine" in our politics mean? Under these conditions, too, patriotism comes to mean loyalty to party or the party leaders, and desertion from the party is branded with the stigma of treason.

It will doubtless be said that we have this same defect in our party divisions. The evil is certainly a very serious one with us, and is, among other results, the chief cause of inefficient and even vicious legislation in the United States.

But the difference is that the government in our system does not depend for its existence upon a party majority in the legislature ; it may, and frequently does, exist in the face of a hostile majority. Hence there is not so much at stake in breaking the party lines, and independence of political action is therefore much more common both among individuals and in the press ; and, notwithstanding the assertion of partisan leaders to the contrary, it is a most healthy and corrective element in our politics. The rank and file of the party retain their individuality, and responsibility for their actions, instead of transferring both to leaders. There is something so un-democratic, too, in this deference and obedience to leaders, something so foreign to the character of the American people, that it is hardly conceivable that they should ever resort to it. As M. de Laveleye said of Cabinet government in Belgium, "it stifles individual initiative and kills originality in political matters."

Nor is it to be assumed, because England has suppressed the "spoils system," that only responsible government is capable of accomplishing this task ; it is the argument "*post hoc propter hoc*," and really proves nothing. The use of patronage in France, Italy and Greece continues to flourish with little attempt at restraint, and is more vicious than it ever was in the United States ; the incentive to resort to it is stronger indeed where the continued existence of the ministry depends upon retaining a majority. As to other forms of corruption, the history of administration in the United States will bear comparison with that of any other State. That we need a radical reform in the system of legislation by committees, which permits of bare-faced corruption by the lobby, will hardly be disputed ; but we should guard against applying a remedy which may prove to be worse than the disease.

Some of the advantages of our system of legislation have been indicated in the preceding pages, by comparison with the defects of Cabinet government. It may be said further, that we have in the Senate, one of the most efficient legislative bodies that have ever existed in any country. It is the

object at once of the admiration and the envy of the statesmen of Europe of all parties ; and even our most severe critics are constrained to admit the excellence of its legislative methods. We have, then, a powerful corrective, in the Senate, of the inefficient legislation of the House.

Without going further into the details of our legislative system, it may be said finally, that we possess checks upon hasty and dangerous legislation touching all the important fundamental rights of the people, which do not exist in countries governed by responsible cabinets. And if we compare the actual working of our government with that of Cabinet government in any country except England, we shall find the advantage strongly in our favor, rather than against us. If one is inclined to doubt this statement, let him read Professor de Laveleye's account of parliamentary government on the continent of Europe, in his last book (*Le gouvernement dans la démocratie*). In the opinion, too, of Professor Gneist, than whom no one has made a more thorough study of English institutions, the English Parliament, by the recent extension of the suffrage, is now exposed to the same influences, and is exhibiting the same defects which prevail on the continent.

It seems somewhat singular that Americans should continue to write essays and books in praise of responsible Cabinet government, when that system is not only being discredited at home, but when, as these same writers admit, there is not the remotest possibility of its introduction into this country. Is not this a waste of energy that would be better employed in a direct attack upon the evils complained of? Mr. Bradford considers the ballot and civil service reforms as mere details and of minor importance ; but they are details, which if carried out, will undermine the worst of our political evils. What Mr. Bradford says of the necessity of greater publicity in our legislative methods is undoubtedly true, but it is not so certain that this can be brought about by the changes which he proposes.

FREEMAN SNOW.

*Harvard University.*